IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12444 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAURASHTRA SAFAI KAMDAR VIKAS SAMITI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12444 of 2004

MR ARVIND K THAKUR for Petitioner No. 1

Ms. Falguni Patel, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 06/10/2004

ORAL JUDGEMENT

Rule. Ms. Falguni Patel, learned AGP waives service of Rule on behalf of the respondents. With the consent of the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Deputy

Secretary, Social Justice and Empowerment Department, dated 27th April 2004 in dismissing the appeal preferred by the petitioner challenging the order passed by the Director, Social Welfare Department. The order came to be passed by the Director, Social Welfare Department, Gandhinagar, on 6.2.2004 in cancelling recognition of the Balwadi run by the petitioner trust and in the said order itself it is observed that if the petitioner is aggrieved the petitioner can prefer an appeal within 30 days before the State Government. However, it appears that instead of approaching the appellate authority the petitioner has again approached the Director for the purpose of reconsideration of its earlier order by representation/application dated 21st February 2004. The Director vide his communication dated 23rd March 2004 informed the petitioner that instead of approaching him the appeal is maintainable before the Deputy Secretary, Social Justice and Empowerment Department and the petitioner should prefer an appeal before the said authority. Thereafter, the petitioner had preferred appeal before the said appellate authority on 2nd April 2004 which came to be dismissed by the appellate authority by order dated 27th April 2004 on the ground that the petitioner had preferred the appeal after a period of 30 days. The said order is under challenge in the present petition.

3. Considering the fact that after the communication dated 23rd March 2004 the petitioner had preferred appeal before the appellate authority within a period of 30 days,the appellate authority instead of dismissing the appeal on technical ground that the appeal was not preferred within 30 days ought to have decided the appeal on merits. It is true that by communication dated 6th February 2004 the petitioner was informed to file appeal within a period of 30 days, however for some bonafide reasons the petitioner preferred representation/application before the very authority who has passed the earlier order for reconsideration of the order and did not prefer an appeal. However, the moment the petitioner was informed by the Director to prefer an appeal the petitioner had immediately preferred the appeal on 2nd April, 2004. Considering the aforesaid facts and circumstances of the case the impugned order passed by the Deputy Secretary, Social Justice and Empowerment Department dated 27th April 2004 is hereby quashed and set aside. The appellate authority, i.e., the Deputy Secretary (Appeals) is directed to decide and dispose of the appeal preferred by the petitioner in accordance with law and on merits after giving opportunity to the petitioner. Rule is made absolute

with no order as to costs.

rmr. [M.R. Shah, J.]